

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

OP.No. 17256 of 1997(D)

PETITIONER:

**MESSRS. M.S.FOUNDRY SUPPLIERS (P) LTD.,
HAVING ITS REGISTERED OFFICE AT 585, CROSS
CUT ROAD, COIMBATORS 641 012 AND HAVING ITS
FACTORY AT S.F NO.869, NEW INDUSTRIAL
DEVELOPMENT AREA, KANJIKODE, PALAKKAD 678 621
REP.BY ITS MANAGING DIRECTOR SHRI
M.S.GOPALAKRISHNAN.**

BY ADV. SRI.V.GIRI

RESPONDENTS:

- 1. STATE OF KERALA REP.BY SECRETARY
(INDUSTRIES DEPARTMENT GOVERNMENT OF
KERALA, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. KERALA STATE ELECTRICITY BOARD REP.BY
THE SECRETARY, VYDYUTHIBHAVANAM,
PATTOM PALACE P.O., THIRUVANANTHAPURAM.**
- 3. SPECIAL OFFICER (REVENUE), KERALA
STATE ELECTIRICTY BOARD, PATTOM PALACE
PO. VYDYUTHIBHAVANAM , THIRUVANANTHAPURAM.**
- 4. THE ASST. EXECUTIVE ENGINEER ELECTRICAL
MAJOR SECTION, KERALA STATE ELECTIRICTY
BOARD, KANJIKODE.**

**BY ADV. SRI.P.SANTHALINGAM, SC, KSEB
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN
SRI.C.K.KARUNAKARAN, SC FOR KSEB**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP. NO.17256/1999

ORDER ON CMP. NO.51459/1999 IN OP. NO.17256/1999

DISMISSED

31.07.2007

SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE GOVERNMENT ORDER G.O.(MS) NO.71/90/ID DT. 21.5.90.

EXT.P2:- COPY OF THE GOVERNMENT ORDER NO.4/92/PL DT. 6.2.92.

EXT.P3:- COPY OF THE BOARD ORDER NO.559/92/PLGCOM DT. 27.3.92.

EXT.P4: - COPY OF THE ELIGIBILITY CERTIFICATE CERTIFIED BY THE DISTRICT MANAGER, KERALA FINANCIAL CORPORATION DT. 8.9.97.

EXT.P5:- COPY OF THE COMMUNICATION SENT TO 3RD RESPONDENT DT. 10.9.97.

EXT.P6:- COPY OF THE CERTIFICATE DT. 6.1.97 ISSUED BY THE 4TH RESPONDENT.

EXT.P7:- COPY OF THE INVOICE NO.37257 DT. 7.2.97 FOR THE MONTH OF JANUARY 1997.

EXT.P8:- COPY OF THE RECEIPT EVIDENCING REMITTANCE OF THE BILL FOR FEB. 1997.

EXT.P9:- COPY OF THE INVOICE NO.28683 DT. 7.4.97 FOR THE MONTH OF MARCH, 1997.

EXT.P10:- COPY OF THE INVOICE NO.46931 DT. 6.9.97 FOR THE MONTH OF AUGUST 1997.

EXT.P11:- COPY OF THE STATEMENT SHOWING THE REMITTANCE MADE BY THE PETITIONER.

EXT.P12:- COPY OF THE JUDGMENT IN OP. NO.7537/97.

/TRUE COPY/

P.S. TO JUDGE

tss

T.R. Ramachandran Nair, J.

O.P.NO.17256 of 1997-D

Dated this the 31st day of July, 2007

JUDGMENT

The petitioner herein is a private limited company engaged in the manufacture of Ferro Manganese. The petitioner was granted power allocation in the year 1994 which was extended upto 26.11.1995. Pursuant to an agreement HT 81/95-96 executed with the Electricity Board, on 24.11.1995, they agreed to supply to the petitioner electricity upto a load of 500 KVA. It is submitted that the supply was actually made only from 30.12.1996 and commercial production started on 31.12.1996. The petitioner started the unit while there were in force various Government Orders allowing concession for industrial units set up in Kerala. Ext.P1 is the order dated 21.5.1990. This was revised and reissued in Ext.P2 with effect from 1.1.1992. Ext.P2 shows that new units will be exempted for five years from the date of commercial production from the payment of enhanced power tariff. The Board has adopted the provisions of the above order as per Ext.P3.

2. Going by the above orders, exemption from payment of electricity

duty as well as concession by way of exemption from payment of enhanced power tariff which came into effect from 1.1.1992, was allowable to the units coming within its ambit also. The petitioner was not granted the benefit apparently and going by Ext.P4 issued by the District Manager of the Kerala Financial Corporation also, he was eligible for tariff concession since commercial production started on 30.12.1996. It is the complaint of the petitioner that in spite of the fact that commercial production started on 30.12.1996, the Board was issuing bills without giving the benefit. The prayers sought for in the original petition are, therefore, to declare that the petitioner's industrial unit is entitled the benefits granted under Exts.P1 to P3 orders and also for a direction to the respondents to collect from the petitioner charges only on the basis of the tariff applicable prior to 1.1.1992, for a period of five years from the date of commencement of commercial production.

3. This court by order dated 8.10.1997 in C.M.P.No.30772/1887 stayed the demand on condition that the petitioner pays 50% of the demand which shall be dependent on the final orders in the original petition.

4. The counsel for the petitioner produced before me a judgment of this court in O.P.No.7537/1997 wherein an identical question was considered. The issue that was considered was in the light of the orders in

question. Therein, the Board contested the claim based on a Government Order dated 26.11.1993 wherein the Government clarified that certain industries will not be eligible for this concession. The relevant clause thereunder as extracted in the judgment, reads as follows:

“Power intensive units based on electro thermal/electro chemical processors or units where total power requirement exceeds 2500 KVA of contract load and where cost of power is more than 25% of the cost of production of the items manufactured except where the units generate their power requirement in excess of 2500 KVA of contract load by own captive power.”

After referring to the various orders, this court was pleased to find that the withdrawal of tariff concession is limited to the industries made mention of in Ext.R1(a)(i) therein which includes power intensive units, the total power requirement of which exceeds 2500 KVA . After considering the power allocation orders in respect of the petitioners therein, this court was pleased to find that the contract demand is only 1950 KVA which is far lower than the limit provided for in the Government Order relied upon by the Board. It was therefore held that the petitioners therein were entitled for the benefit and the Board was directed to grant the benefits arising out of the relevant Government Orders. This was taken in Writ Appeal No.2343/1998 by the Electricity Board which was dismissed by judgment dated 4.11.2003.

5. As regards the power requirement of the petitioner, Ext.P6 is the relevant document produced in proof of the same. Therein, it is certified that the petitioner is having a contract load of 500 KVA which was effected on 30.12.1996. Evidently this is not disputed by the respondents also. The same is issued by the Asst. Executive Engineer of the concerned section for production before the District Industries Centre. Therefore, going by the same, the contract load is only 500 KVA, far below that is fixed in the Government Order dated 26.11.1993, i.e., below 2500 KVA. No other materials have been relied upon by respondents to prove that the claim is not allowable

6. In the light of the above, the petitioner will be entitled for the benefit of Exts.P1 to P3 orders. It is declared so. Therefore, there will be a direction to the respondents to revise the demands after granting the eligible benefits of Exts.P1 to P3. The amounts already remitted by the petitioner pursuant to the interim order passed by this court will be adjusted towards the claim as revised after granting the concession allowable to them as directed above. Consequent proceedings will be issued within a period of two months from the date of receipt of a copy of this judgment. In the

circumstances, Exts.P7 to P10 will stand cancelled.

The Original Petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

kav/

T.R. Ramachandran Nair, J.

O.P.NO.17256 of 1997-D

JUDGMENT

31st day of July, 2007

